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Security Council

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Letter dated 3 May 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 23 February 2005 (S/2005/110). The Counter-Terrorism Committee has received the attached fourth report from Djibouti submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-33908 (E) 310505

Annex

[Original: French]

Note verbale dated 28 April 2005 from the Permanent Mission of Djibouti to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Djibouti to the United Nations presents its compliments to the Committee and, with reference to its letter dated 26 January 2005, has the honour to transmit to it herewith the fourth report of Djibouti on its implementation of the provisions of Security Council resolution 1373 (2001) concerning counter-terrorism (see enclosure).

Enclosure

[Original: French]

Fourth report submitted by the Government of the Republic of Djibouti to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

This report is in response to the questions and comments of the Counter-Terrorism Committee in its letter dated 26 January 2005.

1. Implementation measures

1.1 In respect of paragraph 1 (a) of the resolution, Djibouti's third report states that a reform of the Penal Code is planned "with a view to updating and modernizing the texts". The Committee would appreciate receiving a progress report on this matter. The Committee would like to emphasize that compliance with this part of the resolution should be treated as a priority by Member States.

1.1 The reform that will update and modernize the criminal legislation, and the provisions of the Penal Code in particular, is still in the planning stage. We are expecting a workshop to be held in conjunction with the United Nations Office on Drugs and Crime (UNODC) regarding the incorporation of international instruments into domestic law. Originally scheduled for February, the workshop was put off to a later date because of scheduling problems.

1.2 The Committee takes note of the provisions of the Act on Money Laundering for the freezing of funds and other financial assets of "illicit origin" in case evidence exists that "they could be used to finance terrorist activities" or by the order of a judge, if it is proven that funds of "lawful origin" are being used for terrorist purposes.

In this regard, the Committee would appreciate knowing if there are any administrative measures in place to seize such assets temporarily, as a precautionary measure, when there is only suspicion that they could be used by terrorists. Please provide the Committee with a copy of any such measures.

1.2 With regard to precautionary measures to seize "assets" on the basis of a suspicion, article 4 (2) (11) of the Act on Money Laundering provides that "assets in the control of a criminal organization shall be confiscated when such assets are linked to an offence or are liable to be used for the purpose of financing terrorism".

Article 4 (2) (13) further regulates the disposal of confiscated assets as follows: "The funds or assets confiscated shall devolve to the State, which may allocate them to a fund for combating organized crime or drug trafficking. The assets shall remain encumbered by an amount equivalent to the value of any rights *in rem* legally created in favour of third parties.

In cases of confiscation by default, the confiscated assets shall devolve to the State and shall be converted into cash according to the established procedures in the matter. However, if a court, ruling on a motion to vacate judgement, discharges the accused, it shall order the restitution by the State of the value of the confiscated

assets, unless it is established that such assets are the proceeds of a crime or an offence."

There is no administrative measure allowing the temporary seizure of assets simply on a suspicion. However, any report of a suspicion by the Financial Information Service or the Public Prosecutor's Office may give rise to measures ordering the confiscation of assets seized by a judge (art. 4 (1) (1) et seq.).

1.3 Regarding the regulations that are in place for the alternative remittance systems and informal banking networks, the Committee would be pleased to receive an outline of the provisions of the Act on Money Laundering dealing with these issues, particularly those of articles 2 and 9 mentioned in Djibouti's third report.

1.3 The regulations that are in place for the alternative remittance systems and informal banking networks are found in article 2 (2) (9), which provides that "the immediate exchange of banknotes or coins in different currencies and the delivery of cash against some other form of payment in a different currency constitutes a manual exchange operation within the meaning of this law".

Individuals or businesses habitually engaged in performing manual exchange operations must:

(a) Submit a statement of activity, before starting operations, to the Central Bank of Djibouti with a view to obtaining the authorization to do business as provided under existing law, and show proof in that statement of the legal source of the funds needed to set up the establishment;

(b) Establish the identity of their clients by requiring the presentation of an original, valid official document bearing a photograph, of which a copy is to be kept, before performing any transaction involving more than one million francs or any transaction conducted under unusually or unnecessarily complicated conditions;

(c) Keep a chronological record of all operations, indicating their nature, the amount involved, the full name of the client and the number on the document presented, in an account book numbered and initialled by the competent administrative authority, which must be kept for at least five years after the last operation recorded.

The same obligations apply to individuals or businesses habitually engaged in the transfer of funds.

These are the terms of the Act on Money Laundering with regard to alternative remittance systems and informal banking networks.

We would ask the Committee to specify whatever other information it would like to have.

1.4 With regard to the questions raised by the Committee in its previous letter at paragraph 1.7, referring to the implementation of paragraph 2 (a) of the resolution, the Committee wishes to emphasize the need for Member States to have in place legislation criminalizing activities contained therein, in spite of the fact that, in the case of Djibouti, they have not occurred.

1.4 The Republic of Djibouti takes careful note of the Committee's suggestion on the implementation of paragraph 2 (a) of the resolution. We shall study the possibility, in the light of our laws and principles, during the forthcoming workshop with the United Nations Office on Drugs and Crime.

1.5 In relation to the Arab Convention for the Suppression of Terrorism, to which Djibouti is a party (according to paragraph 1.18 of Djibouti's latest report), the Committee takes note that this Convention has not been translated into domestic legislation. In this context, the Committee wishes to remind Djibouti to become a party, as a matter of urgency, to the relevant international conventions and protocols, whether or not it is a party to regional conventions on the matter. The Committee further recalls that paragraph 3 (d) of the resolution calls on all Member States "to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999".

The Committee would appreciate receiving an update on the steps that have been taken by Djibouti to become party to such conventions.

1.5 The Committee is reminded that the Republic of Djibouti has taken steps to accede to and ratify 11 international anti-terrorism instruments, with the exception of the International Convention for the Suppression of the Financing of Terrorism, which it expects to ratify in the near future.

As for the incorporation of the provisions of international instruments into domestic law, the Republic of Djibouti would like to start having the Committee's cooperation in the form of technical assistance.

1.6 Regarding the implementation of paragraph 2 (e) of the resolution, and the response provided in paragraph 1.19 of the report, the Committee would appreciate receiving a clarification of the responsibilities of foreign residents who commit a criminal act outside Djibouti.

1.6 Foreign residents in the Republic of Djibouti who commit a criminal act are subject to the same penalties as its nationals. If a foreign resident commits a criminal act abroad, the courts of Djibouti have no jurisdiction except where the victim is a Djiboutian or where the interests of Djibouti are compromised.

In all cases, when the Government of the Republic of Djibouti receives a request for extradition made in accordance with the law, it reviews the request.

1.7 The Committee takes note of the ratification of the 10 international conventions and protocols relating to terrorism that were pending at the time of the last report. In this regard, the Committee would appreciate receiving a progress report on their incorporation into domestic law.

1.7 See the response to paragraph 1.5: Djibouti has acceded to 11 of the conventions and protocols relating to terrorism.

1.8 In paragraph 1.24 of Djibouti's latest report, it is stated that "the Government is interested in acceding" to the United Nations Convention against Transnational Organized Crime and "will do so as soon as the opportunity arises". The Committee would be pleased to be kept informed of

this matter, due to the strong links — clearly recognized by Djibouti — between organized crime and terrorism.

1.8 As it had indicated it intended to do, in paragraph 1.24 of its previous report, the Republic of Djibouti has since then ratified, in January 2005, the United Nations Convention against Transnational Organized Crime and two of its Protocols. The instruments of accession to the Convention, to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention, and to the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the Convention, were deposited with the Secretary-General on 20 April 2005.

2. Assistance and guidance

2.1 The Committee wishes to emphasize once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of the resolution. The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee again encourages Djibouti to let it know if there are further areas in which assistance or advice might be of benefit to it in its implementation of the resolution.

2.1 The Republic of Djibouti would like the technical assistance of the Committee, working in conjunction with the United Nations Office on Drugs and Crime, in the area of incorporating international instruments into domestic law.

2.2 The Committee wishes to develop a constructive dialogue with Djibouti in relation to measures it is taking to implement the resolution; in particular with regard to those areas here identified as a priority. If Djibouti feels that it could benefit from discussing aspects of the implementation of the resolution with the experts of the Committee, it is welcome to contact the Counter-Terrorism Executive Directorate, as indicated in paragraph 3.1 below. In addition, the Committee may, through its Executive Directorate, contact the competent authorities of Djibouti to discuss any further matters related to the implementation of the resolution.

2.2 Djibouti has taken careful note of the offer the Committee is making and will definitely contact those indicated.

3. Submission of further reports

3.1 The Committee and its Executive Director stand ready to provide further clarification to Djibouti on any of the matters raised in this letter. The Executive Director can be contacted through Ms. Roselaure Charles (tel: 1 (212) 457-1853; fax: 1 (212) 457-4041; and/or e-mail: charles4@un.org).

3.1 Djibouti notes with satisfaction the availability of the Committee and its Executive Director and has made a record of the contact information for the Director and his assistant.

3.3 The Committee may, in a future stage of its work, have further comments or questions for Djibouti arising from other aspects of the resolution. It would be grateful to be kept informed of all relevant developments regarding the implementation of the resolution by Djibouti.

3.3 Djibouti will certainly, as is its practice, inform the Committee about any new developments and any matters relating to the implementation of the resolution.

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Letter dated 3 May 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 23 February 2005 (S/2005/118). The Counter-Terrorism Committee has received the attached fifth report from Kazakhstan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-33862 (E) 200505 010605

Annex

Letter dated 1 May 2005 from the Permanent Representative of Kazakhstan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to forward to you the comments of the Republic of Kazakhstan submitted pursuant to paragraph 6 of resolution 1373 (2001), which address the questions contained in the letter from the Chairman of the Counter-Terrorism Committee dated 2 February 2005 (see enclosure).

(*Signed*) Yerzhan **Kazykhanov**

Enclosure*

[Original: Russian]

Replies of the Government of the Republic of Kazakhstan to the questions posed by the experts of the Counter-Terrorism Committee concerning the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 In accordance with Government decision No. 167 of 24 February 2005, a draft law amending and supplementing certain legislative acts of the Republic of Kazakhstan on the maintenance of national security, prepared by the National Security Committee, was submitted to and is currently under consideration by the Majlis (lower chamber) of Kazakhstan's Parliament.

This draft law provides, inter alia, for the insertion in the Criminal Code of a new article 233-3 entitled "Financing extremist and terrorist activities".

The procedure for applying this provision of the Criminal Code and other legal aspects of the efforts to combat terrorist financing are outlined in the draft law on combating the legalization (laundering) of funds obtained unlawfully and the financing of terrorism, prepared by the Agency for the Suppression of Corruption and Economic Crime, together with other interested Government agencies. The draft law is to be submitted to Parliament in August or September 2005. As a rule, Parliament completes its consideration of draft laws within two months.

1.2 The legislation currently in force does not establish criminal liability on the basis of the intention to commit an action. However, the Criminal Code does contain article 24, "Planning and attempted commission of an offence", under which:

- Planning an offence is defined as, with direct intent, finding, making or adapting the means or instruments for the commission of an offence, finding accomplices to an offence, conspiring to commit an offence or otherwise intentionally creating the conditions for the commission of an offence, where the offence is not completed owing to circumstances independent of the individual's will;
- Criminal liability is incurred only for planning a grave or especially grave offence;
- Attempting an offence is defined as the commission, with direct intent, of actions (omissions) directly aimed at the commission of an offence, where the offence is not completed owing to circumstances independent of the individual's will;
- Criminal liability is incurred only for attempting an intermediate, grave or especially grave offence;

* Annexes are on file with the Secretariat and are available for consultation.

• Criminal liability for planning or attempting an offence is incurred under the same article of the Criminal Code as for the completed offence, with reference to the relevant section of the article.

For information:

"Article 9. Concept of offence

The commission of a socially dangerous action (omission) prohibited by this Code and punishable under it shall be considered an offence. The application of criminal law by analogy is not allowed.

An action (omission) that nominally contains elements of an act referred to in the Special Section of this Code but does not pose a danger to society on account of its insignificance, i.e. is an action that does not cause damage or risk causing damage to individuals, society or the State, shall not be considered an offence.

"Article 10. Categories of offence

1. Acts referred to in this Code shall be subdivided, according to their nature and the degree of danger they pose to society, into lesser, intermediate, grave and especially grave offences.

2. Intentional acts punishable under this Code by imprisonment for not more than two years and negligent acts punishable under this Code by imprisonment for not more than five years shall be considered lesser offences.

3. Intentional acts punishable under this Code by imprisonment for not more than five years and negligent acts punishable under this Code by imprisonment for not more than five years shall be considered intermediate offences.

4. Intentional acts punishable under this Code by imprisonment for not more than 12 years shall be considered grave offences.

5. Intentional acts punishable under this Code by imprisonment for more than 12 years or by the death penalty shall be considered especially grave offences."

1.3 (i) Information on the draft law on combating the legalization (laundering) of funds obtained unlawfully and the financing of terrorism is contained in paragraph 1.1 (the draft law is reproduced in annex I).

(ii) A financial monitoring body is to be established pursuant to the draft law (chapter 3 of the draft law).

It is provisionally intended to establish this body within the Office of the Procurator General.

(iii) There is no provision in Kazakh law under which legal persons may be held criminally liable. Legal persons may incur civil or administrative liability.

Under article 21 of the Act "On combating terrorism", the activities of civil society organizations and international organizations engaging in terrorist activity may be suspended on the basis of an application by the Procurator General.

When a civil society organization declared to be a terrorist organization is shut down by decision of a court, property belonging to it is confiscated and becomes State property.

When a court declares an international organization to be a terrorist organization, the activities of this organization are prohibited in the territory of Kazakhstan, its branches are shut down and property belonging to them or to the international organization itself is confiscated and becomes State property.

See also article 7 of the draft law on combating the legalization (laundering) of funds obtained unlawfully and the financing of terrorism, which is reproduced in annex I.

(iv) The Act of the Republic of Kazakhstan "On the accession of the Republic of Kazakhstan to the Convention on the Physical Protection of Nuclear Material" was adopted on 28 December 2004. With the adoption of this Act, Kazakhstan became a party to all 12 international counter-terrorism instruments.

In 2004, agencies of the National Security Committee arrested 11 persons who had attempted to carry out unlawful transactions involving radioactive materials; five of them have since been convicted. A number of articles of a precautionary or preventive nature were published in the national mass media. Also, in response to the repeated publication of accusations that Kazakhstan is not complying with the international regime for the non-proliferation of nuclear and radioactive materials, an official statement by the National Security Committee was placed in the mass media. Relevant information was sent to the Ministry of Foreign Affairs for the preparation and transmittal to the American side of a protest note through the diplomatic channel.

1.4 Response to paragraph 1.4

No funds belonging to the individuals apprehended by the Kazakh authorities for involvement in planning terrorist acts (as mentioned in the fourth report of Kazakhstan) were frozen: first, because no funds were discovered; and, second, because, even if they had been, there would have been no legal grounds for freezing them.

1.5 It should be noted that the draft law reproduced in annex I takes account of the 40 recommendations and 9 special recommendations of the Financial Action Task Force on Money Laundering (FATF).

1.6 The National Security Committee Anti-Terrorism Centre was established in 2004. Its terms of reference include liaising with similar structures abroad in order to combat international terrorism. Prevention of access to weapons by terrorists is one aspect of that activity.

Draft agreements on cooperation in combating the illicit traffic in arms, ammunition and explosives and on combating terrorist activity by mercenaries have been prepared and approved within the framework of the Regional Anti-Terrorism Structure of the Shanghai Cooperation Organization. Similar efforts are under way within the Council of Heads of Security Agencies of the countries of the Commonwealth of Independent States (CIS), the CIS Anti-Terrorism Centre, the Collective Security Treaty Organization and the Organization of Central Asian Cooperation.

A number of practical results have been achieved. In 2004, the activities of a highly secretive terrorist organization, the Zhamaat of Mojaheddin of Central Asia, which was active in the territory of four CIS countries and constituted a link in the Al-Qaida network, were uncovered and suppressed, foiling its plans to commit a string of terrorist acts and establish bases in Kazakh territory to train its fighters.

The measures taken led to the arrest of leaders, members and accomplices of the organization, six of whom were Uzbek citizens. In addition, 17 Kazakh citizens were arrested for aiding and abetting terrorists, including four women trained as suicide bombers. Currently, 16 persons are being prosecuted; judicial hearings are continuing.

Two Kazakh citizens who, on the instructions of Al-Qaida members from the United Arab Emirates, were seeking sites in Zhambyl region for the establishment of bases to train fighters are being prosecuted.

A channel was uncovered via which Uzbek citizens were being conveyed in transit across the territory of Kazakhstan, Azerbaijan and the Islamic Republic of Iran on a route through Shymkent, Aqtaū, Baku, Zakhedan and Peshawar to undergo training in terrorist camps in Pakistan.

Three Kazakh citizens (E. Taizhanov, A. Toleubai and A. Zhulbaev) were arrested for participating in the activities of an illegal paramilitary group in Chechnya. In April 2005, two of them were convicted of mercenarism. In addition, five Russian citizens, members of illegal Chechen armed gangs who had fled to Kazakhstan, were arrested and extradited to the Russian Federation.

In the context of their efforts to combat the illicit traffic in arms and ammunition, in 2004 agencies of the National Security Committee confiscated 71 firearms, more than 4,000 different types of ammunition, 301 kilograms of explosives, 13 grenades and 3 improvised explosive devices.